

tions. This occurs in states that have not developed their own regulatory programs, on Federal lands in states with their own programs but which have not been granted authority to regulate Federal lands, and on Indian lands. In these situations, permits issued by the Office are direct Federal actions or undertakings subject to the requirements of Section 106.

### **Rural Electrification Administration**

*Jennifer Corwin*

Established in 1935, the Rural Electrification Administration is a credit agency of the Department of Agriculture that assists rural electric and telephone utilities in obtaining financing.

When it is determined that proposed construction will affect an archeological site, the Administration consults with the State Historic Preservation Officer and other interested parties to assess levels of impact and examine alternative plans and mitigation measures. Often a proposed project, such as an overhead utility line, can avoid an archeological site by spanning it. However, if avoidance is not possible, the Administration will ensure that a qualified archeological consultant is hired to perform surveys, conduct excavations, and monitor project construction as needed.

### **Soil Conservation Service**

*Michael Kaczor*

The Soil Conservation Service, an agency in the Department of Agriculture, provides technical, and in some cases financial, assistance to protect the nation's soil, water, and related resources. It assists the public through nearly 3,000 locally organized and run conservation districts, which generally follow county boundaries.

The Service's cultural resources program has three objectives: 1) to help protect archeological sites from erosion; 2) to ensure that significant cultural resources are not inadvertently destroyed by conservation activities carried out with Service assistance; and 3) to help scientists obtain valuable environmental information from sites.

To protect sites from erosion, the Service usually works with other Federal agencies, State Historic Preservation Officers, and local governments. Recently, the Service provided erosion control assistance to the Grand Village of Natchez, a national historic landmark in Mitchell, South Dakota, and to a number of prehistoric and historic archeological

sites in St. Mary's City, a national historic landmark in southern Maryland.

To ensure that significant cultural resources are not inadvertently destroyed by its assistance activities, the Service conducts review, survey, and, if necessary, mitigation activities. A recent highlight was the completion of data recovery on the Pilcher Creek archeological site in eastern Oregon. The site, located in a Service watershed project area, was excavated under contract by Oregon State University. It is the first upland Windust site (ca. 8-10,000 years ago) in the Pacific Northwest and has three meters of stratified deposits.

In conducting cultural resource studies, the Service tries to obtain information important to other scientific disciplines. For example, soil information was obtained as part of the archeological data recovery of the Effigy Rabbit site in Tennessee.

### **Tennessee Valley Authority**

*J. Bennett Graham*

The Tennessee Valley Authority was established as an independent corporate Federal agency by Congress in 1933 to provide flood control, improve navigation, produce electric power, and provide planning for the Tennessee Valley—an area long devastated by flooding, soil erosion, and widespread poverty. Along with its role as one of the nation's largest

electric power producers, TVA continues to be a regional development and resource managing agency.

Through a cultural resources program operating out of the office of natural resources and economic development, TVA seeks to identify and protect significant cultural resources on its lands. It considers effects of TVA projects and seeks comments from state agencies and the Advisory Council on Historic Preservation on appropriate strategies to avoid or mitigate potential damage.

The office carries out cultural resource inventories of TVA property and determines when resources should be nominated to the National Register of Historic Places. It also prepares management, development, and protection plans in cooperation with the TVA office having custody of the property and is responsible for issuing permits for archeological research on TVA lands. Finally, the office recommends provisions for protection of significant cultural resources for inclusion in deeds or other documents conveying TVA lands or land rights.

A series of monographs resulting from archeological surveys of its major projects over the past 60 years outlines the archeological commitment of the TVA. Surveys continue today as a part of the comprehensive archeological inventory of TVA properties across the region.

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## **Government, the Public, and the Law**

Reflecting the interests and concerns of the American public, the Federal government's support of archeology has led to an array of laws, regulations, and executive orders designed to protect archeological sites and resources. Although Federal agencies take different approaches to their legal responsibilities regarding archeological resources to meet their individual directives, the Federal government has developed a national program based on legislation to manage and protect historic and prehistoric sites on lands administered by the Federal government or associated with Federally assisted or licensed projects.

**The Antiquities Act of 1906** (P.L. 59-209, 16 U.S.C. 431-433) was the first general law providing protection for archeological resources. It protects all historic and prehistoric sites on Federal lands and prohibits excavation or destruction of such antiquities without the permission (antiquities permit) of the secretary of the department having jurisdiction. It also authorizes the president to declare areas of public lands as national monu-

ments and to reserve or accept private lands for that purpose. Applicable regulation: 43 CFR 3, Antiquities Act of 1906.

**The National Park Service Organic Act of 1916** (P.L. 64-235) states that the parks are "...to conserve the scenery and the natural and historic objects, and the wildlife and to provide for the enjoyment of the same in such a manner and by such means as will leave them unim-

paired for the enjoyment of future generations.”

**The Historic Sites Act of 1935** (P.L. 74-292) (P.L. 74-292, 16 U.S.C. 461-467) declares as national policy the preservation for public use of historic sites, buildings, objects, and properties of national significance. It gives the Secretary of the Interior authority to make historic surveys, to secure and preserve data on historic sites, and to acquire and preserve archeological and historic sites. Subsequently, this authority allowed the establishment of the River Basin Survey, which surveyed and excavated hundreds of sites in advance of large water development projects in the major river basins of the Midwest.

This Act also establishes the National Historic Landmarks program for designating properties having exceptional value in commemorating or illustrating the history of the United States. It gives the Secretary of Interior broad powers to protect nationally significant historic properties, including the Secretary's authority to establish and acquire nationally significant historic sites. Applicable regulations: 36 CFR 65, National Historic Landmarks and 36 CFR 68, DOI Standards for Historic Preservation.

**The Federal-Aid Highway Act of 1956** (P.L. 91-605), because of public concern about the destruction of archeological sites as a result of highway construction, included a provision prohibiting the use of historic lands unless there was no feasible alternative. This is the first act to recognize that archeological sites are important for their data content, and to provide a source of funding for collecting archeological data.

**The Department of Transportation Act of 1966** (P.L. 89-670, 79 U.S.C. 1651-59) directs the Secretary of Transportation not to approve any program or project that requires the use of land from a historic site of national, state, or local significance unless there is no feasible and prudent alternative to use such lands and such program includes all possible planning to minimize harm to such historic properties. Section 7f of the Act requires as national policy to make a special effort to enhance natural beauty and historic sites along transportation routes. This applies to the Federal Highway Administration, Federal Aviation Administration, the Urban Mass Transportation Administration, and the U.S. Coast Guard.

**The National Historic Preservation Act of 1966** as amended (P.L. 95-515)

(P.L. 102-575, 16 U.S.C. 470-470t) establishes as Federal policy the protection of historic sites and values in cooperation with other nations, states, and local governments. It establishes a program of grants-in-aid to states for historic preservation activities. Subsequent amendments designated the State Historic Preservation Officer as the individual responsible for administering programs in the states.

The Act also created the President's Advisory Council on Historic Preservation. Federal agencies are required to consider the effects of their undertakings on historic resources, and to give the Advisory Council a reasonable opportunity to comment on those undertakings. Applicable regulations: 36 CFR 60, National Register of Historic Places; 36 CFR 65, National Historic Landmarks; 36 CFR 800, "Protection of Historic Properties" (Advisory Council on Historic Preservation); 36 CFR 801, "Urban Development Action Grant Program - Historic Preservation Requirements"; 36 CFR 61, Procedures for Approved State and Local Government Programs; and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

In 1980, amendments were passed to codify portions of **Executive Order 11593**, requiring an inventory of Federal resources and Federal agency programs to protect historic resources; clarify Federal agency inventory considerations and evaluation of resources to be excluded from the 1% fund limit under the 1974 act (only actual data recovery activities must be included within the 1%); and authorize Federal agencies to charge reasonable costs for protection activities to Federal permittees and licenses. This last provision resolved a controversy about whether private interests could be required to pay costs of protecting archeological and historic resources that would otherwise be destroyed by those activities.

The amendments also established policies and authorities for national historic preservation programs. Among these are the National Register of Historic Places; the Advisory Council on Historic Preservation including, under section 106, the Council's powers to review Federal undertakings that affect historic properties; and a partnership with State Historic Preservation Offices and, subsequently, certified local governments. It also created the Historic Preservation Fund with matching grants

to SHPOs and the National Trust for Historic Preservation.

Amendments passed in 1992, commonly known as the Fowler Bill, broadened historic preservation issues to include Native American and other indigenous American people, as well as to bring about greater cooperation with state governments and non-profit organizations.

**The National Environmental Policy Act of 1969** (P.L. 91-190, 40 U.S. 1500-17.7, 42 U.S.C. 4321-61) requires Federal agencies to prepare an environmental impact statement for every major Federal action that affects the quality of the human environment, including both natural and cultural resources. The act offered procedural protection from Federal action for natural and cultural resources of the human environment. It can be used to apply for cultural resources not found to be eligible for listing on the National Register for Historic Places (and therefore under the purview of NHPA). Finally, it also created the Council on Environmental Quality.

**The Reservoir Salvage Act** (P.L. 86-523) requires Federal agencies to provide notice to the Secretary of the Interior of any dam constructions and, if archeological resources are found, for recovery or salvage of them. The law was amended in 1974 to become the **Archeological and Historic Preservation Act** (P.L. 93-291, 16 U.S.C. 469-469c), commonly known as the "Moss-Bennett Act." The amended law applies to any agency whenever it received information that a direct or federally assisted activity could cause irreparable harm to prehistorical, historical, or archeological data; up to 1% of project funds could be used to pay for salvage work. The NHPA authorizes additional funding for this purpose.

The Act extended the provisions to all Federal construction activities and all Federally licensed or assisted activities that will cause loss of scientific, prehistoric, or archeological data. It requires the Secretary of the Interior to coordinate this effort, and to report annually to Congress on the program. It permits agencies either to undertake necessary protection activities on their own or to transfer to the secretary up to 1% of the total authorized for expenditure on a Federal or Federally assisted or licensed project to enable the secretary to undertake the necessary protection activities.

**The American Indian Religious Freedom Act of 1978** (P.L. 95-341) makes it a policy of the government to protect and preserve for American Indians,

Eskimos, Aleuts, and Native Hawaiians their inherent right of freedom to believe, express, and exercise their traditional religions. It allows them access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rights. It further directs various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with Native traditional religious leaders to determine changes necessary to protect and preserve Native American cultural and religious practices. Applicable regulation: 43 CFR 7, ARPA Permitting.

**The Archaeological Resources Protection Act of 1979** (P.L. 96-95, 16 U.S.C. 470aa-470ll) supplements the provisions of the 1906 Antiquities Act. The law makes it illegal to excavate or remove from Federal or Indian lands any archeological resources without a permit from the land manager. Permits may be issued only to educational or scientific institutions, and only if the resulting activities will increase knowledge about archeological resources. Major penalties for violating the law, both fines and imprisonment, are included. The Act authorizes the Secretary of the Interior to promulgate regulations for the ultimate disposition of materials recovered as a result of permitted activities. Permits for archeological work on tribal lands cannot be issued without the consent of the tribe. The Act also regulates the taking of archeological resources on Federal lands, contains a permit system for excavating or remov-

ing archeological resources, and places prohibitions on the sale, purchase, transport or entry into interstate commerce of items taken in violation of the Act. (P.L.100-555; 100-588)

Two amendments have been made to ARPA since it was enacted. P.L. 100-555 requires Federal agencies to develop plans for surveying lands not scheduled for projects and develop and implement a uniform system for reporting and recording archeological violations. P.L. 100-588 lowers the felony threshold to \$500, adding attempts to loot or vandalize as a crime and requiring Federal land managers to develop public awareness programs.

**The Abandoned Shipwreck Act of 1987** (P.L. 100-298), signed into law April 28, 1988, transfers to states title to abandoned shipwrecks that are on or eligible for the National Register of Historic Places or in protected coral formations (except wrecks on Federal or Indian lands). It also clarifies the definition of "embedded," requires the Secretary of Interior to prepare guidelines to help states and Federal agencies, and encourages states to create underwater parks.

**The Native American Graves Protection and Repatriation Act** (P.L. 101-601; 104 Stat. 3048, 25 USC 3001 note.), signed into law on November 16, 1990, requires Federal agencies and museums to inventory human remains and associated funerary objects and to provide culturally affiliated tribes with the inventory of collections. The Act requires repatriation, on request, to the culturally affiliated tribes and establishes a grant program within the

Department of the Interior to assist tribes and Native Hawaiian organizations in repatriation and to assist museums in preparing the inventories and collections summaries. It also makes the sale or purchase of Native American human remains, whether or not they derive from Federal or Indian lands, illegal.

**The Legacy Resource Management Program** was established by Congress through the Department of Defense Appropriations Act, Section 8120 of 1991, to help the Department of Defense enhance its cultural and natural resource stewardship of more than 25 million acres of land under its jurisdiction. Legacy activities integrate the management of these resources with the DOD mission and the public interest. Archeological resource preservation, conservation, and management are important elements in this program.



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